

H. R. 402.

[No Report.]

IN THE HOUSE OF REPRESENTATIVES,

DECEMBER 10, 1850.

Mr. STRONG, on leave, introduced the following bill ; which was read twice, and referred to the Committee on Elections.

DECEMBER 12, 1850.

Reported back from the Committee, by Mr. STRONG, without amendment, and its further consideration postponed until Monday, the 23d of December instant.

A BILL

To prescribe the mode of obtaining evidence in cases of contested elections.

1 *Be it enacted by the Senate and House of Represen-*
2 *tatives of the United States of America in Congress*
3 *assembled,* That from and after the passage of this act,
4 whenever any person shall intend to contest an election of
5 any member of the House of Representatives of the Uni-
6 ted States, he shall, within thirty days after the result of
7 such election shall have been determined by the officer, or
8 board of canvassers, authorized by law to determine the
9 same, give notice, in writing, to the member whose seat he
10 designs to contest, of his intention to contest the same ;

11 and, in such notice, shall specify, particularly, the grounds
12 upon which he relies in the contest: *Provided*, That in
13 all elections for the thirty-second Congress heretofore held,
14 any person intending to contest the same may give notice
15 thereof within thirty days after the passage of this act.

1 SEC. 2. *And be it further enacted*, That any member
2 upon whom the notice mentioned in the first section of this
3 act may be served, shall, within thirty days after the ser-
4 vice thereof, answer such notice, admitting or denying the
5 facts alleged therein, and stating specifically any other
6 grounds upon which he rests the validity of his election,
7 and shall serve a copy of his answer upon the contestant.

1 SEC. 3. *And be it further enacted*, That when any
2 such contestant or returned member shall be desirous of
3 obtaining testimony respecting such election, it shall be
4 lawful for him to make application to any judge of any
5 court of the United States, or to any chancellor judge or
6 justice of a court of record of any State, or to any mayor,
7 recorder, or intendant, of any town or city, which said offi-
8 cer shall reside within the Congressional district in which
9 such contested election was held, who shall thereupon issue
10 his writ of subpœna directed to all such witnesses as shall
11 be named to him, requiring the attendance of such wit-
12 nesses before him at some time and place named in the
13 subpœna, in order to be then and there examined respect-

14 ing the said contested election, in the manner hereinafter
15 provided.

1 SEC. 4. *And be it further enacted,* That every such
2 witness shall be duly served with such subpœna by a copy
3 thereof being delivered to him or her, or left at his or her
4 usual place of abode, at least five days before the day on
5 which the attendance of the witness is required: *Provided,*
6 That no witness shall be required to attend an examination
7 out of the county or parish in which he or she may reside,
8 or be served with a subpœna.

1 SEC. 5. *And be it further enacted,* That any per-
2 son summoned in the manner hereinbefore directed, and
3 refusing or neglecting to attend and testify, unless prevent-
4 ed by sickness, or unavoidable necessity, shall forfeit and
5 pay the sum of twenty dollars, to be recovered, with costs
6 of suit, by the party at whose instance the subpœna was
7 issued, and for his use, by an action of debt, in any court
8 of the United States; and shall also be liable to an indict-
9 ment for a misdemeanor and punishment by fine and im-
10 prisonment.

1 SEC. 6. *And be it further enacted,* That the party at
2 whose instance such subpœna may be issued, shall, at least
3 ten days before the day appointed for the examination of
4 the witnesses, give notice, in writing, to the opposite party
5 of his intention to examine witnesses, which notice shall

6 contain a statement of the time and place of the proposed
7 examination, the name of the officer who shall conduct the
8 same, the names of the witnesses to be examined, and their
9 places of residence, which notice shall be served by leaving
10 a copy with the person to be notified, or at his usual place
11 of abode: *Provided*, That neither party shall give notice
12 of taking testimony at different places at the same time,
13 or without allowing an interval of at least five days be-
14 tween the close of taking testimony at one place and its
15 commencement at another.

1 SEC. 7. *And be it further enacted*, That all witnesses
2 who shall attend in obedience to said subpœna, or who
3 shall attend voluntarily at the time and place appointed,
4 of whose examination notice has been given as provided
5 in the next preceding section, shall then and there be ex-
6 amined on oath or affirmation, by the magistrate who is-
7 sued the subpœna aforesaid, or in case of his absence by
8 any other such magistrate as is authorized by this act
9 to issue such subpœna, touching all such matters and things
10 respecting the election about to be contested as shall be
11 proposed by either of the parties aforesaid, or either of
12 them, or by their or either of their agents; and the testi-
13 mony of the witnesses, together with the questions pro-
14 posed by the parties or their agents, the said magistrate is
15 hereby authorized and required to cause to be reduced to

16 writing, in his presence, and in the presence of the parties
17 or their agents, if attending, and to be duly attested by the
18 witnesses respectively ; after which he shall immediately
19 transmit by mail the said testimony, duly certified under his
20 hand, and sealed up, to the Clerk of the House of Repre-
21 sentatives for the time being, together with a copy of the
22 subpcena, and of the notice served upon the party as pro-
23 vided in the preceding section, and of the proof of the ser-
24 vice of such notice.

1 SEC. 8. *And be it further enacted*, That the said
2 magistrate shall have power to require the production of
3 papers, and on the refusal or neglect of any person to pro-
4 duce and deliver up any paper or papers in his possession
5 pertaining to said election, or to produce and deliver up
6 certified or sworn copies of the same in case they may be
7 official papers, he shall be liable to all the penalties pre-
8 scribed in the fifth section of this act ; and all papers thus
9 produced, and all certified or sworn copies of official papers,
10 shall be transmitted by said magistrate with the testimony
11 of witnesses to the Clerk of the House of Representa-
12 tives.

1 SEC. 9. *And be it further enacted*, That the testi-
2 mony taken by the parties to the contest, or either of them,
3 shall be confined to the proof or disproof of the facts al-
4 leged or denied in the notice and answer mentioned in the

6 first and second sections of this act, and no testimony
7 shall be taken after the expiration of sixty days from the
8 day on which the answer of the member returned shall be
9 served upon the contestant, and a copy of the notice of
10 contest, and of the answer of the returned member, shall
11 be prefixed to the depositions taken, and transmitted with
12 them to the Clerk of the House of Representatives: *Pro-*
13 *vided*, That the House may, at their discretion, allow sup-
14 plementary evidence to be taken after the expiration of
15 said sixty days.

1 SEC. 10. *And be it further enacted*, That when no
2 such magistrate as is by the third section of this act au-
3 thorized to take depositions shall reside in the Congres-
4 sional district from which the election is proposed to be
5 contested, it shall be lawful for either party to make appli-
6 cation to any two justices of the peace residing within the
7 said district, who are hereby authorized to receive such
8 application, and jointly to proceed upon it in the manner
9 hereinbefore directed

1 SEC. 11. *And be it further enacted*, That every wit-
2 ness attending by virtue of such subpoena as is herein di-
3 rected to be issued, shall be allowed the sum of seventy-
4 five cents for each day's attendance, and the further sum
5 of five cents for every mile necessarily travelled in going
6 and returning, which allowance shall be ascertained and

7 certified by the magistrate taking the examination, and
8 shall be paid by the party at whose instance such wit-
9 ness was summoned; and each judge, justice, chancellor,
10 mayor, recorder, intendant, and justice of the peace, who
11 shall be necessarily employed pursuant to the provisions
12 of this act, and all sheriffs, constables, or other officers,
13 who may be employed to serve any subpœna or notice
14 herein provided for, shall be entitled to receive from the
15 party at whose instance the service shall have been per-
16 formed, such fee or fees as are or may be allowed for sim-
17 ilar services in the States wherein such service may be
18 rendered respectively.